

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. In November 2008 the Department received a report from the school the petitioner's children had recently begun attending that one of the children had a burn mark on her

arm. A Department investigator interviewed both children at the school.

2. The Department subsequently concluded that the burn mark was accidentally inflicted by the children's stepfather. However, the Department became concerned because the stepfather had been substantiated when he was fifteen years old for sexually fondling a five-year-old girl, and the petitioner's girls were then ages four and six.

3. The stepfather claimed not to have known about the substantiation, but he and the petitioner agreed to a "safety plan" for the girls to assuage the Department's concerns.

4. During their interviews with the Department the girls had said that other adults living in their home, besides their mother and stepfather, were their uncle and grandmother. At that time, the Department's investigators were unaware of the grandmother's history of sexual abuse, and no further action was taken by the Department, although the case remained open.

5. On February 10, 2009, the Department received a report that the children were truant from school. A truant officer reported that he had gone to the children's home, but had been denied entry. In the next day or two, a Department

investigator returned to the home with a police officer.¹ The petitioner's brother and mother were living in the home (a house trailer), and they denied that the petitioner and her children were living there. The investigator noticed that it appeared that the mother and brother had been living in the home for quite a while, and that it further appeared that other adults and children had, until recently, been occupying a room in the home.

6. With the help of Economic Services (the petitioner is a recipient of public benefits) the investigator subsequently determined that the petitioner and the children and stepfather were living in a nearby town and were sharing a home with the stepfather's brother. The Department again became concerned because the stepfather's brother is also a registered sex offender.

7. When confronted again by the Department the petitioner and the stepfather were cooperative, and agreed that just the petitioner and the children would move into the home of some female friends.

¹ The police had reason to suspect drug manufacture, but this proved not to be the case.

8. It appears that it was at this time that the Department became aware of the history of the petitioner's mother.

9. To date, the Department has not substantiated the petitioner for risk of harm regarding the children's contact with their stepfather and his brother. It appears that the Department is satisfied that the petitioner was unaware of their histories, and with the petitioner's cooperation and follow through with "plans" suggested by the Department once she was so informed.

10. The Department has determined, however, that the petitioner should be substantiated for having placed her children at risk of harm from sexual abuse for the time they lived with the petitioner's mother, from November 2008 at least through January 2010.

11. At all times, the petitioner has admitted and acknowledged that she knows her mother has an extensive history of child sexual abuse. The petitioner admitted she was aware that her mother had gone to prison following a conviction for child sexual abuse, and that she had previously lost custody of all eight of her children,

including the petitioner, because of court findings of sexual abuse.²

12. At the hearing the petitioner did not deny that her mother poses a risk to children.

13. In almost every other regard, however, the petitioner's testimony at the hearing was rife with contradictions and inconsistencies. The petitioner has simultaneously alleged that she and her children never lived with her mother and that she never left her children alone with her. Neither allegation was deemed credible.

14. A preponderance of credible evidence establishes that at least from November 2008 through January 2009 the petitioner and her children lived in the same house trailer with her mother, and that the petitioner tried to hide this fact from the Department, including suddenly moving (without notice to the children's school) when she learned the Department was further investigating her living situation.

15. It is found that the petitioner knowingly placed her children at risk of harm by living in the same home with

² Although the petitioner had been placed in foster care at the time, there is no evidence or allegation that she, herself, was ever directly victimized by her mother.

a person whom the petitioner knew has an extensive criminal and civil history of child sexual abuse.

ORDER

The Department's decision is affirmed.

REASONS

"Abuse" and "risk of harm" are defined in 33 V.S.A. § 4912 as follows:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

. . .

(4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

The Department bears the burden of proof by a preponderance of evidence adduced at the hearing to show that the petitioner's actions rise to the level of "risk of harm". See e.g., Fair Hearing No. 21,173. In this case, based on the above findings, it must be concluded that the Department has met that burden. Therefore, the Board must affirm the

Department's decision in the matter. 3 V.S.A. § 3091(d),
Fair Hearing Rule No. 1000.4D.

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